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No. 88-949

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

RICHARD O. POST, JR.,

Petitioner,

—against—

JOHN M. REGAN, JR. and
MARSH & MCLENNAN COMPANIES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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POINT I

PETITIONER NEVER CEASED TRYING TO OBTAIN THE INVESTIGATION REPORT; RESPONDENTS IDENTIFIED IT AS THE ONLY WRITING PERTAINING TO THE LIBELS IMPARTED TO THE PUBLISHER THEREOF AND RELIED UPON THE INVESTIGATION IT REPORTED IN SUPPORT OF SUMMARY JUDGMENT. THE DISTRICT COURT READ IT *IN CAMERA* AND RELIED UPON IT *EX PARTE*, AND THE SECOND CIRCUIT PERPETUATED THIS ERROR

Respondents' statement of the first question presented sets the tone for its brief by setting forth three incorrect factual statements. Thus, it is claimed that 1) petitioner "acknowledged he had full and complete opportunity to conduct discovery" of the information contained in the *in camera* investigation report; 2) that such report was "never relied upon" by respondents; and 3) that the courts below "specifically excluded" that report in considering the summary judgment motion (Brief in Opposition, p. i).

1. **Acknowledgement**. The affidavit of Charles L. Trowbridge, sworn to October 6, 1987, and submitted in support of petitioner's discovery motion is included in the appendix to this reply brief at pages 28a-33a. It describes petitioner's unabated efforts to obtain this critical report. Discovery was never "closed" in this case as stated by respondents, and petitioner's motion to obtain discovery and inspection of the report was never decided by the district court.

2. **Reliance**. In answer to petitioner's supplemental request for document production, Item 15, respondents identified the June 6, 1984, investigation report, and no other document, as "information imparted to defendant John M. Regan . . . pertaining to all or any part of the subject matter of said defendant's utterances of June 8, 1984, referred to in the amended complaint." A true copy of that demand and respondents' answer is included in the appendix to this reply brief at page

34a. At pages 49, 50 and 51 of respondents' brief to the district court in support of the summary judgment motion, respondents repeatedly claimed reliance by respondent Regan upon the results of the investigation as imparted to him by in-house and outside counsel. Those pages are appended in relevant part (35a-36a). Respondents stated, among other things:

> Certainly, when reliance on an experienced author or illustrator is sufficient to cause courts to hold that conduct is not grossly irresponsible, Mr. Regan's conduct similarly cannot be deemed culpable, given his proper reliance on his inside and outside counsel, members of the Company's senior management and so forth. Moreover, it offends logic even to suggest that the Chairman of the Board of a major corporation is not entitled to rely on *information provided to him which had been gathered by the Company's outside counsel and other experts over the course of two months* (36a). (Italics ours).

The only written report of that two month effort ever identified by respondents is the June 6, 1984, memorandum admitted in respondents' discovery response to have contained "information imparted" to Regan dealing with the libels of June 8, 1984, alleged in the amended complaint.

Respondents' claims in the brief under reply that they never relied on that report are thus contradicted by their own prior statements to the district court. Regan did not conduct the investigation. He had to rely upon the report prepared by those who did. This was the only such report. Reliance upon the investigation is tantamount to reliance upon the report. Regan never testified that he did not rely upon this report, as the brief in opposition claims. The report had not even been identified at the time he testified. His entire deposition testimony was before the courts below. Review thereof will demonstrate that he never said any such thing.

3. "Specifically Excluded."

What happened here is clear. The district court received and reviewed the June 6, 1984, investigation report *in camera* and

thereafter neglected to rule upon petitioner's motion for discovery thereof for use in opposing summary judgment. Respondents' statement that the district court denied the request for production of this report is misleading and untrue. The October 20, 1987, memorandum order (1a, 2a of Petition) treated that report and the broad category of documents requested as to which discovery was denied, separately. Petitioner's memorandum on the discovery motion, quoted from in the October 20, decision also treated them separately. The entire sentence from pages 1 and 2 of petitioner's memorandum partially quoted by the district court in its discovery order (1a, 2a) read:

> This motion seeks production of that June 6, 1984, memorandum together with *all documents prepared in connection with the investigation of the corporate defendants' $165 million pre-tax loss brought to light by plaintiff on April 5, 1984* and relied upon or presented to and not relied upon by defendant Regan in regard to the matters in suit. (Material quoted by the district court italicized).

Plainly, when the district court denied discovery of the documents described in the italicized language, it was not ruling as to the June 6, 1984 report.

Furthermore, it would make no sense to deny discovery of the report and then take it in for *in camera* examination.

Then the district court necessarily relied on this investigation report when it found:

> Defendants have come forward with admissible evidence that the investigation and subsequent reporting were conducted in a careful, responsible manner. The investigation was conducted over a two month period and was not done hastily. It involved interviews of relevant parties and reviews of transactions and documents by inside and outside counsel, by staff and independent accountants as well as by senior management. (12a).

There is no "admissible" or inadmissible evidence in the record which comes remotely close to providing evidentiary sup-

port for the findings of fact quoted above. There are several references in the record to the fact that an investigation was conducted, but only the investigation report to which petitioner has been denied access could provide proof of what it consisted, what it concluded, and what Regan learned about the investigation therefrom.

Respondent's assertion that the courts below "specifically excluded" the *in camera* report in considering the summary judgment motion is predicated entirely upon respondents' distorted surmise that since both courts referred to "admissible" evidence, the "inadmissible, privileged investigation" report could not have been taken into account. This ignores the unalterable fact that there is no other evidence to support the findings both courts made regarding the investigation and its conclusions. It also ignores the fact that Regan's state of mind as shaped by that which was placed before him is vitally relevant on the issue of his degree of fault, making the report uniquely important and "admissible." No independent investigation by petitioner would suffice and any claim of privilege must yield. *Herbert* v. *Lando*, 441 U.S. 153, 60 L.Ed.2d 115 (1979).

Review of the record in considering this petition will quickly confirm the truth of what we say. That, we submit, is what prompts respondents to argue so strenuously against such review.

Important individual rights have been disregarded in this case. Deceptive advocacy has been rewarded. A private citizen has had his career and reputation destroyed by flagitious falsehoods uttered to the public press and has been deprived of recourse on the basis of *ex parte* proof. Surely this merits review.

POINT II

THE INVESTIGATION REPORT IS NOT "ADMITTEDLY PRIVILEGED" AND SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WITHOUT PERMITTING PETITIONER ACCESS TO IT.

Petitioner believes the investigation report advised Regan that there was no evidence petitioner had known of or participated in the improper bond trading, that petitioner had disclosed same immediately upon his discovery thereof, that petitioner cooperated in all respects with the investigation, and that petitioner had terminated his employment for independent reasons well before such discovery and disclosure.

If this is so, the case should be tried whatever standard of fault is required to be shown, and however "careful and responsible" the investigation may have been. There is abundant evidence upon which the jury can return a verdict that Regan's remarks, taken as a whole and given their normal meaning to the ordinary listener, identified petitioner as a participant who engaged in deliberate concealment of his wrongdoing, and asserted his employment to have been terminated for that reason. The jury can then return a further verdict that Regan's remarks about petitioner were knowingly false or uttered with callous disregard for the truth because he had contrary information before him in the form of the investigation report. That satisfies any fault standard from "actual malice" on down.

If the investigation report accused petitioner of the same misconduct Regan accused him of, petitioner is entitled to a trial of his libel claims against the corporate respondent on whose behalf the investigation was conducted and the report made.

Petitioner has been regarded as at fault by the Second Circuit and the district court on the basis of an investigation, the principal evidence of which he has not seen (21a and 12a). Review of the record will reveal the overwhelming evidence probative of petitioner's non-culpability in the entire affair, including the results of the massive investigation by the SEC finding no

wrongdoing on his part and the corporate respondent's detailed memorandum in support of its loss claim against its fidelity underwriters which contained no suggestion of any fault on the part of petitioner. The SEC conclusions are clearly admissible under this Court's recent decision in *Beech Aircraft Corp.* v. *Rainey*, 57 U.S. Law Week 4043 Nos. 87-981 and 87-1028 (Dec. 12, 1988).

Petitioner will demolish any suggestion of fault on his part that may be found in the investigation report at trial. But he has to see it in order to do so. The courts below have denied him that opportunity by dismissal without trial by jury of genuine issues of fact.

POINT III

REVIEW SHOULD BE GRANTED BECAUSE THE SECOND CIRCUIT'S ERRONEOUS VIEW OF NEW YORK'S GROSS IRRESPONSIBILITY STANDARD AS A CONSTITUTIONAL REQUIREMENT EFFECTIVELY DEPRIVED PETITIONER OF APPELLATE REVIEW OF THE DISMISSAL OF HIS ACTUAL DAMAGE CLAIMS

Respondents claim the degree of fault required to be proved is solely a state law issue. The Second Circuit regarded it as a constitutional issue. Review should be granted either way.

So far as state law is concerned, in its decision establishing the gross irresponsibility standard, *Chapadeau* v. *Utica Observer-Dispatch, Inc.*, 38 N.Y.2d 196 (1975), the New York State Court of Appeals in a libel suit against a newspaper, after discussing the decisions of this Court in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 11 L.Ed.2d 686 (1964) through *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 41 L.Ed.2d 789 (1974), stated:

> We now hold that within the limits imposed by the Supreme Court where the content of *the article* is arguably within the sphere of legitimate public concern, which is reasonably related to matters warranting public exposi-

> tion, the party defamed may recover; however, to warrant such recovery he must establish, by a preponderance of the evidence, that *the publisher* acted in a grossly irresponsible manner without due consideration for the *standards of information gathering and dissemination* ordinarily followed by responsible parties (p. 199) (italics ours).

The reference to "the article", "the publisher" and "standards of information gathering and dissemination" is strongly suggestive of the view that introduction of the grossly irresponsible standard was designed to protect the media—journalists striving to report fast breaking news events with limitations upon time and access to information. The New York Court of Appeals has never held the grossly irresponsible requirement applicable to a non-media defendant.

It is thus an open question in the New York State Court of Appeals today whether a person like Regan having intimate familiarity with the subject matter of the speech in question, an elite staff of investigators and professional assistants and plenty of time to check the facts, would enjoy the same protection as a journalist.

By mistakenly regarding petitioner's actual damage claims as subject to an enhanced constitutional fault requirement, the Second Circuit disabled itself from determining whether the New York Court of Appeals would extend *Chapadeau* to non-media defendants as a matter of state law, notwithstanding the lesser constitutional requirement of simple fault.

The lower state court decisions relied upon by respondents on the gross irresponsibility question, *Luisi* v. *JWT Group, Inc.*, N.Y.L.J., September 18, 1987, at 7, Col. 3 (N.Y.Sup.Ct.), affirmed mem., 138 A.D.2d 987, 525 N.Y.S.2d 454 (1st Dept. 1988), and *Pollnow* v. *Poughkeepsie Newspapers, Inc.*, 107 A.D.2d 10, 486 N.Y.S.2d 11 (2d Dept. 1985), affirmed, 67 N.Y.2d 778 (1986), are unreliable state law authority because both approach the question as though it is a constitutional and not a state law issue. The New York Court of Appeals was at

pains to note in *Pollnow* that the gross irresponsibility issue was conceded and therefore not decided by it.

The Second Circuit's incorrect view of the constitutional proof of fault requirement abundantly justifies this Court's review.

CONCLUSION

FOR THE REASONS STATED ABOVE AND IN THE PETITION, A WRIT OF CERTIORARI SHOULD BE GRANTED TO REVIEW THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

84 Civ. 9185 (RJD)

RICHARD O. POST, JR.,

Plaintiff,

—against—

JOHN M. REGAN, JR., and
MARSH & MCLENNAN COMPANIES, INC.,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION FOR PRODUCTION OF DOCUMENTS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CHARLES L. TROWBRIDGE, being duly sworn, deposes and says:

1. He is a member of the firm of Walker & Corsa, attorneys for plaintiff in this libel and breach of contract action, is fully familiar with the papers and proceedings heretofore had herein, and makes this affidavit in support of plaintiff's motion pursuant to Rules 26 *et seq.*, 34 and 37 FRCP directing defendants to produce for inspection and copying at least 10 days before the trial, all writings, whether prepared by counsel or otherwise, placed before, or the contents of which were in any way communicated to, defendant John M. Regan, Jr., on or before June 8, 1984, which refer or relate to the matter of the bond trading losses and related activities forming the subject of the pleadings in this case and/or plaintiff's connection therewith, including but not limited to, those writings which it is contended by

defendants on their summary judgment motion that Mr. Regan relied upon in making the statements pertaining thereto, or, if considered appropriate by this Honorable Court, directing such production and the deposition of defendant John M. Regan, Jr., for use in connection with the pending summary judgment motion.

2. On June 25, 1986, we served and filed supplemental requests for documents and interrogatories. Defendant served and filed a response, (copy annexed hereto as Exhibit 1)—which quotes our requests—and proceeds to embark upon definitions, general objections, specific objections, alleged inability to understand very simple demands and produces virtually no usable discovery in this case. Defendant refused to answer any of the interrogatories. We are reluctant to ask this Court to review this but a glance at it will reveal what we are up against and have been up against in this case.

3. Our supplemental document request No. 15 asked for all the documents pertaining to "information imparted to defendant John M. Regan, Jr., from any source whatsoever, pertaining to all or any part of the subject matter of said defendant's utterances of June 8, 1984 referred to in the amended complaint or the answer and counterclaim herein" (Ex. 1, p. 18). Defendants responded as follows:

> "Defendants object to this request insofar as it requests 'any and all' documents relating to 'information' from 'any source whatsoever' on the grounds that it is vague, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence and requests documents prepared subsequent to June 8, 1984. Defendants further object to this Request insofar as it seeks information subject to the attorney-client and work product privileges. *See* General Objection No. 1. Insofar as the defendants are able to discern the import of request No. (a) 15, subject to the general objection stated above and subject to the specific limitations indicated herein with respect to other Requests, defendants herewith identify, without waiving same, one privileged document as a draft

Memorandum, dated June 6, 1984, from counsel to files, prepared for the purposes of rendering legal advice and in anticipation of litigation." (Ex. 1, p. 18).

4. Since the state of defendant Regan's mind when he made the remarks which form the subject of this lawsuit is highly relevant, and since the best and most reliable way to prove that state of mind is to develop that which was communicated to him, we pressed defendants' counsel in subsequent conversations and correspondence to produce the reports they made to Mr. Regan and anything else that he had before him in the way of information as input for what he said on June, 8, 1984. It was, and is, difficult for deponent to accept that with all the high powered investigation and analyses taking place, only one "privileged" document could be located by defendants' counsel that had any bearing. This doubt has been exacerbated by Exhibit 2, hereto, a May 2, 1984, memorandum from in-house counsel at MMC directing memoranda generated in the bond loss matter at MMC to be sent to a partner in MMC's outside law firm with all drafts to be destroyed.

5. We have had no success with these requests. We thereafter noticed the deposition of the corporate defendant by Mr. Regan (previously we had taken his deposition pursuant to a notice directed to him as individual defendant very early in the case without requesting any documents other than those needed by Mr. Regan to refresh his recollection). Defendants' counsel refused to produce him and this led to a further motion before Judge Griesa that came on to be heard on June 12, 1986. A transcript of those proceedings was taken and is annexed hereto as Exhibit 3. Judge Griesa declined to direct Mr. Regan to appear for further deposition. He stated at page 23 of Exhibit 3

"THE COURT: Why couldn't you have asked him? The reason I ask is this, that discovery is a pretty big burden and Mr. Regan has got big responsibilities, and I don't like to worry any more about the head of a company than other people, but heads of companies are, the fact of life is they are pretty busy, and I don't

really seek to have him coming back and back to depositions.

Furthermore, you will have a trial, and you can ask him. It is not unknown for people to realize between depositions and trial that there are a few other questions they want to ask, so I don't really see why you have to button it down quite so finely in deposition. Why do you have to do that?

MR. TROWBRIDGE: Okay.

THE COURT: I would just ask him at the trial. Undoubtedly, if it goes to trial, there will be plenty of ideas everybody has.

So why don't you do it without further depositions.

MR. TROWBRIDGE: Okay.
(p. 23).

Plainly, the assumption underlying the denial of this deposition was that we would have an opportunity to examine Regan at trial.

6. Now, by summary judgment motion before a new judge, defendants would deprive plaintiff of any opportunity to question Regan about sources he relied upon in making his remarks of June 8, 1984 or to examine the documents, including those prepared by counsel, which were before him at that time. To compound the unfairness here, defendants, in seeking to deprive plaintiff of his day in court, inject as an issue in this case Mr. Regan's alleged right to rely upon the "expert advisors" he consulted, without disclosing to Court or counsel what the content of that being relied upon was. Thus, at page 50 of defendants' memorandum in support of the summary judgment motion it is stated:

> "As Mr. Regan testified, the remarks that he made at the Company's June 8, 1984 Annual Meeting had been prepared by Mr. Regan in conjunction with the Company's outside counsel Willkie Farr & Gallagher, the law firm that

> had conducted the factual internal investigation of the Company's $165 million loss . . . Further, the Company's in-house general counsel participated in reviewing the remarks as to senior management of the Company . . . Mr. Regan's conduct similarly cannot be deemed culpable, given his proper reliance on his inside and outside counsel. . ."

And again at page 51:

> "Moreover, it offends logic even to suggest that the Chairman of the Board of a major corporation is not entitled to rely on information provided to him which had been gathered by the Company's outside counsel and other experts over the course of two months . . . In these circumstances, Mr. Regan and the Company's senior management simply would have no reason to question the information provided to them by their advisors."

In item 23 of their Rule 3(g) statement Regan's statements it is alleged "were made in good faith and were believed by him to be true on the basis of reasonable inquiry, investigation and advice of his advisors".

7. As the accompanying memorandum of law demonstrates, and common sense dictates, where state of mind is an issue and particularly where a party to litigation has introduced in issue his good faith or his faithful reliance upon information provided by counsel, there is no privilege or, if there is one it has been waived, and the documents or information must be produced.

8. Regan testified on the brief deposition he gave that he had no knowledge of any participation or knowledge on the part of Mr. Post of the fraudulent practices, concealment, or actual trading which produced the bond losses. This would suggest that he had no reports of counsel, senior management or from other sources that would so indicate. Yet he made the remarks sued upon which accuse Post of complicity in all this as spelled out in Mr. Post's affidavit at paragraphs 14 through 56. What did the June 6, 1984 memorandum from his attorneys to their

file that was admittedly provided to Mr. Regan, and upon which he claims to have relied in good faith tell him? What else did he review that framed his state of mind? Where is the product of this two months long investigation as imparted to Regan? Court and counsel and jury have an absolute right to know in this case. Defendants have put it in issue. Surely they cannot fairly request summary judgment predicated upon the alleged faithful reliance by Mr. Regan on what he has been told and then decline to produce the best and only evidence of what he has been told by reason of "privilege" or "work product" or whatever other objections they have.

9. If Regan had "advice" that plaintiff knew of, participated in, concealed or was fired because of, the bond trading, that should be disclosed whatever its form. If he had "advice" to the contrary, that should be disclosed.

10. For the reasons separately submitted, summary judgment should be denied and it is no defense to the claims against defendants herein that Mr. Regan may have been parroting what others told him. However, since we still will have to contend with the claim that Mr. Regan relied upon these materials at the trial, and they are evidence of his state of mind as of June 8, 1984, production should be directed pursuant to Rules 34 and 37 of the Federal Rules of Civil Procedure at least 10 days before trial. If there is any serious consideration to be given to the granting of summary judgment, plaintiff should have the opportunity to examine Mr. Regan on deposition subsequent to the production of the alleged sources relied upon, and those called to his attention, whether or not he relied upon them for consideration on the motion.

Sworn to before me this
6th day of October, 1987

/s/ CHARLES L. TROWBRIDGE
Charles L. Trowbridge

CATHERINE A. DAUPHIN
Notary Public
CATHERINE A. DAUPHIN
Notary Public State of New York
No. 010A-4563742
Qualified in Richmond County
Commission Expires Oct. 15, 1988

Item 15 of Defendants' Response to Plaintiff's Supplemental Document Request

15. Information imparted to defendant John M. Regan, Jr., from any source whatsoever, pertaining to all or any part of the subject matter of said defendant's utterances of June 8, 1984 referred to in the amended complaint or the answer and counterclaim herein.

Response to Request No. (a) 15:

Defendants object to this Request insofar as it requests "any and all" documents relating to "information" from "any source whatsoever" on the grounds that it is vague, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence and requests documents prepared subsequent to June 8, 1984. Defendants further object to this Request insofar as it seeks information subject to the attorney-client and work product privileges. *See* General Objection No. 1. Insofar as defendants are able to discern the import of Request No. (a) 15, subject to the general objections stated above and subject to the specific limitations indicated herein with respect to other Requests, defendants herewith identify, without waiving same, one privileged document as a draft Memorandum, dated June 6, 1984, from counsel to files, prepared for the purposes of rendering legal advice and in anticipation of litigation.

Excerpts from Defendants' Brief in Support of Motion for Summary Judgment (pages 49, 50 and 51).

As applied, under the *Chapadeau* standard, a "publisher," either private or media, cannot be "grossly irresponsible" if he "publishes" information obtained from a dependable source unless the "publisher" had substantial reasons to doubt the accuracy of the information: *See, e.g., Nelson v. Globe International, Inc., supra*, 626 F. Supp. at 976; *Rust Communications, Inc. v. 70 State Street Travel Service, Ltd.*, 122 A.D.2d 584, 504 N.Y.S.2d 927, 927-28 (4th Dept. 1986).

As a general matter, a demonstration of reliance on a professional experienced in the field and/or the review of the material to be "published" by trusted advisors negates any inference of "gross irresponsibility" and warrants granting summary judgment in defendants' favor. *E.g., Nelson v. Globe International, Inc., supra* (defendant relied on an experienced journalist, and editors and advisors reviewed; therefore, conduct was not grossly irresponsible and summary judgment granted); *Chapadeau v. Utica Observer-Dispatch, supra* (two authorities consulted and article reviewed by two advisors proves that defendant's conduct was not "grossly irresponsible;" therefore, summary judgment appropriate); *Rust Communications Group, Inc. v. 70 State Street Travel Service, Ltd., supra* (entitled to rely on U.P.I. wire service and local newspaper item; therefore, no "gross irresponsibility," and summary judgment mandated); *Quezada v. The Daily News, supra* (not "gross irresponsibility" to rely solely on experienced professional illustrator to produce "fictionalized" drawing; therefore, summary judgment granted).

Applying this standard to the instant action, it is abundantly clear that the undisputed facts demonstrate, as a matter of law, that Mr. Regan's conduct was not "grossly irresponsible." As Mr. Regan testified, the remarks that he made at the Company's June 8, 1984 Annual Meeting had been prepared by Mr. Regan in conjunction with the Company's outside counsel, Willkie Farr & Gallagher, the law firm that had conducted the factual internal investigation of the Company's $165 million loss. (Regan dep. at 6; Exhibit 17 to the Foster Aff.). Further,

the Company's in-house general counsel participated in reviewing the remarks as did senior management of the Company. (Regan dep. at 6). Mr. Regan summarized the amount of expert advisors that he relied upon in connection with the preparation and review of the remarks quite succinctly: "I asked for a lot of help. . . . I got a lot of counsel both inside and outside on it." (Regan dep. at 6-7).

Certainly, when reliance on an experienced author or illustrator is sufficient to cause courts to hold that conduct is not grossly irresponsible, Mr. Regan's conduct similarly cannot be deemed culpable, given his proper reliance on his inside and outside counsel, members of the Company's senior management and so forth. Moreover, it offends logic even to suggest that the Chairman of the Board of a major corporation is not entitled to rely on information provided to him which had been gathered by the Company's outside counsel and other experts over the course of two months. (*See* Exhibits 14, 15, 16 and 17 to the Foster Aff.). In these circumstances, Mr. Regan and the Company's senior management simply would have no reason to question the information provided to them by their advisors.